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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
Civil Action No. 1:09-cv-01790

MEMO ENDORSED

9/28/09  
Terminate Motion  
As moot.

Cullen McMal

MELISSA ALLEN,

Plaintiff,

v.

MEDCATH INCORPORATED,

Defendant.

**DEFENDANT MEDCATH INCORPORATED'S MOTION TO DISMISS**

Pursuant to Rules 12(b)(2) and 12(b)(3) of the Federal Rules of Civil Procedure ("Fed. R. Civ. P."), Defendant, MedCath Incorporated ("MedCath"), by counsel, respectfully moves to dismiss Plaintiff's Complaint. MedCath makes this Motion to Dismiss without waiving other motions and defenses. In support of its Motion, MedCath states as follows:

1. Plaintiff filed this action against MedCath Corporation on February 25, 2009.
2. On March 20, 2009, Plaintiff amended her Complaint to name MedCath Incorporated as the sole defendant.
3. On April 20, 2009, Plaintiff filed an Affidavit of Service swearing under oath that on April 2, 2009 Diane Koehler served the following on MedCath Incorporated: (a) Summons in a Civil Action, (b) Return of Service, (c) Notice to Amend Complaint and Proposed Amendments, (d) Civil Cover Sheet, (d) Origin, Amended Complaint and Jury [sic], all by service on the Secretary of the State of New York.
4. As more particularly described in its Memorandum in Support of Its Motion to Dismiss and the Declaration of James P. McLoughlin, Jr.:

(a) MedCath is not the owner or operator of the Arizona Heart Hospital. Rather, Arizona Heart Hospital, LLC, which is a wholly separate entity from MedCath, owns and operates that hospital.

(b) Neither MedCath nor Arizona Heart Hospital, LLC transacts business in or otherwise has sufficient minimum contacts with the State of New York required for this Court to confer personal jurisdiction.

5. Venue is not proper in this district in that none of the parties resides within the district or is found in this district, and none of the acts alleged in the Amended Complaint occurred in this district.

6. In the alternative, Defendants moves that this action be transferred to the United States District Court for the District of Arizona, which is the proper judicial district.

WHEREFORE, Defendant respectfully moves the Court to dismiss the Complaint for lack of personal jurisdiction, or in the alternative, to transfer this action to the United States District Court for the District of Arizona, and award Defendant such other relief as the Court deems proper.

This 22<sup>nd</sup> day of April, 2009.

Respectfully submitted,

/s/ James P. McLoughlin, Jr.  
James P. McLoughlin, Jr.  
New York Bar Number 042650  
Attorney for Defendant  
MOORE & VAN ALLEN, PLLC  
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Charlotte, NC 28202  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 22<sup>nd</sup> day of April, 2009, I electronically filed the foregoing **DEFENDANT'S MOTION TO DISMISS** with the Clerk of Court using the CM/ECF system, which will send notification of such filing to counsel for plaintiff:

Patricia Finn  
450 Piermont Avenue  
Piermont, New York 10968

/s/ James P. McLoughlin, Jr.  
James P. McLoughlin, Jr.